

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement By:

JESSICA MARIE LOZA,

Petitioner.

OAH No. 2011020264

DECISION

This matter was heard by a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board) on February 24, 2011, in Los Angeles. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. The record was closed and the matter was submitted for decision, following which the Board met in an executive session and decided the matter after the hearing.

Jessica Marie Loza (Petitioner) appeared and represented herself.

Langston Edwards, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Business and Professions Code section 2878.7.

FACTUAL FINDINGS

1. On May 16, 2002, the Board issued Vocational Nurse License No. VN 199566 to Petitioner.

2A. The Board, in a Default Decision and Order (Board Case No. VN-2003-2253), revoked Petitioner's license, effective March 9, 2007.

2B. The Board concluded that Petitioner had committed the following acts of unprofessional conduct. On July 21, 2004, Petitioner was convicted of one count of transportation, sale or distribution of marijuana to a minor (her 13-year-old step-son). No costs were awarded against Petitioner in that matter.

3. The petition for reinstatement was filed with the Board on October 14, 2010; it is timely and meets all jurisdictional requirements.

4. There is no evidence that Petitioner has committed any subsequent acts which would be violations of the pertinent laws related to the Board's licensees or which would be considered grounds for denial of an application for a license.

5. Pursuant to Penal Code section 1210.1, subdivision (d)(1), Petitioner was allowed to participate in a Substance Abuse Program, which she completed successfully. Petitioner thereafter completed her probation from the criminal case. Her conviction was later expunged pursuant to Penal Code section 1203.4.

6. To some degree, Petitioner's past misconduct was related to turbulence in her personal life, including an acrimonious divorce from her ex-husband. Petitioner has since stabilized her life, including remarrying and continuing a loving relationship with her current husband, staying gainfully employed in the construction industry, and regularly attending church and bible study classes. Petitioner would like to become a registered nurse, and she is taking steps toward that goal. The Board commends Petitioner for her efforts in self-improvement.

7. To a larger degree, Petitioner's past misconduct stemmed from her addiction to alcohol and drugs. Petitioner has remained sober since September 19, 2005. She established a sincere commitment to maintaining her sobriety, as demonstrated by her completing a chemical dependency program, continuing to attend group meetings, and recently passing a drug test. Petitioner finds that attending one Alcoholics Anonymous meeting per month in combination with regular bible study classes is the right combination for her. Petitioner also presented a copious amount of persuasive character reference letters which attest to Petitioner's honesty, integrity, and on-going commitment to sobriety.

8. In order to stay current in this field, Petitioner completed a nurse refresher course in 2010, a CPR course in 2010, and had enrolled in another nurse refresher course scheduled to begin about the time of the hearing in this matter.

9. The Board was impressed with Petitioner's demeanor during the hearing. She presented as a person highly motivated to succeed in life and, more importantly, to maintain her sobriety. The Board is doubtful that Petitioner will once again become involved in the same type of problems that led to the revocation of her license.

LEGAL CONCLUSIONS

1. *Burden of Proof.* The burden in this petition for reinstatement of a revoked license rests with Petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084.)

2. *Standard of Review.* Business and Professions Code section 2878.7 provides the Board with authority to reinstate a revoked license for reasons the Board deems sufficient. In doing so, the Board may impose reasonable conditions. (Bus. & Prof Code, § 2878.7, subd. (d).)

3. *Disposition.* In this case, Petitioner met her burden of establishing clearly and convincingly that cause exists to reinstate her license pursuant to Business and Professions Code section 2878.7. Petitioner demonstrated a convincing commitment to maintaining her sobriety. She has resolved the personal problems that plagued her before. Thus, two of the root causes of her past misconduct have been resolved. Petitioner made a very sincere and convincing presentation to the Board, and demonstrated the requisite level of rehabilitation, such that public protection will not be compromised by reinstating her license on probationary terms. Given her addictions, however, the terms of probation must include those aimed at confirming her continuing sobriety. In respecting Petitioner's preference regarding the type of support group she attends, the term requiring attendance of support and recovery groups has been modified to include bible study or similar faith-based classes. In addition, since Petitioner has not been licensed in over four years, she will be required to take and pass the licensure examination pursuant to Business and Professions Code section 2892.4. (Factual Findings 1-9.)

ORDER

The petition for reinstatement is granted. Vocational Nurse License No. VN 199566, previously issued to Petitioner Jessica Marie Loza, is reinstated. However, the license shall be immediately revoked; the revocation stayed, and Petitioner shall be placed on probation for two years under the following conditions:

1. **OBEY ALL LAWS**

Petitioner shall obey all federal, state and local laws, including all statutes and regulations governing the license. Petitioner shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, Petitioner shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the Petitioner to the Board.

Petitioner shall also submit to the Board a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

If Petitioner is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. **COMPLIANCE WITH PROBATION PROGRAM**

Petitioner shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the Petitioner's compliance with the Probation Program.

Upon successful completion of probation, the Petitioner's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Petitioner shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Petitioner's compliance with all the conditions of the Board's Program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Petitioner shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Petitioner shall provide information regarding the status of each license and any change in license status during the period of probation. Petitioner shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Petitioner shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Petitioner shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Petitioner's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Petitioner shall notify the Board, in writing, within five (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Petitioner resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. Petitioner shall provide written notice to the Board within five (5) days of any change of residency or practice.

Petitioner shall notify the Board, in writing, within five (5) days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Petitioner shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Petitioner shall notify his/her employer of the probationary status of Petitioner's license. This notification to the Petitioner's current health care employer shall occur no later than the effective date of the Decision. The Petitioner shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Petitioner shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Petitioner shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Petitioner shall notify the Board, in writing, within five (5) days of any change in employment status. Petitioner shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Petitioner shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Petitioner shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Petitioner shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Petitioner shall obtain approval from the Board of the supervision provided to the Petitioner while employed.

Petitioner shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Petitioner, at his or her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify the Petitioner of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Petitioner shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Petitioner shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Petitioner shall, at all times, maintain an active current license with the Board including any period of suspension.

Probation shall not commence until a license is issued by the Board. Petitioner must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should Petitioner's license expire, by operation of law or otherwise, upon renewal or reinstatement, Petitioner's license shall be subject to any and all conditions of this probation not previously satisfied.

12. COST RECOVERY REQUIREMENTS

Petitioner was not previously ordered to pay costs to the Board.

13. LICENSE SURRENDER

During probation, if Petitioner ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Petitioner may surrender his/her license to the Board. The Board reserves the right to evaluate Petitioner's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Petitioner will no longer be subject to the conditions of probation.

Surrender of Petitioner's license shall be considered a disciplinary action and shall become a part of Petitioner's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- * Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or

- * One (1) year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION

If Petitioner violates the conditions of his/her probation, the Board, after giving the Petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of the Petitioner's license. If during probation, an accusation or petition to revoke probation has been filed against the Petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

15. CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Petitioner shall begin attendance at a chemical dependency support group, such as Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group, or a bible study group or other faith-based support group where attendance is documented in writing. Verified documentation of attendance shall be submitted by Petitioner with each written report as required by the Board. Petitioner shall continue attendance in such a group for the duration of probation.

16. ABSTAIN FROM CONTROLLED SUBSTANCES

Petitioner shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

17. ABSTAIN FROM USE OF ALCOHOL

Petitioner shall completely abstain from the use of alcoholic beverages and products containing alcohol.

18. SUBMIT BIOLOGICAL FLUID SAMPLES

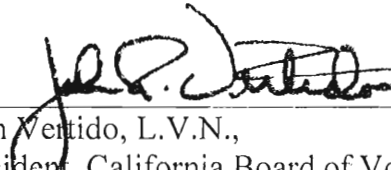
Petitioner shall immediately submit to biological fluid testing, at Petitioner's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the Petitioner's current employer.

19. TAKE AND PASS LICENSURE EXAMINATION

Prior to resuming practice, Petitioner shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's decision. Petitioner shall pay the established examination fees. This probationary period shall not commence until the Petitioner has successfully passed the licensure examination and a license is issued by the Board.

This Decision shall be effective May 20, 2011.

Dated: May 5, 2011



John Vertido, L.V.N.,
President, California Board of Vocational
Nursing and Psychiatric Technicians